

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
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<b>HUDSON GENERAL CORPORATION</b>	:	
For Revision of a Determination or for Refund of Sales	:	
and Use Taxes Under Articles 28 and 29 of the Tax Law	:	
for the Period March 1, 1996 through May 31, 1996.	:	DETERMINATION
	:	DTA NOS. 818179
	:	AND 818180

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In the Matter of the Petition	:	
of	:	
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<b>HUDSON GENERAL LLC</b>	:	
For Revision of a Determination or for Refund of Sales	:	
and Use Taxes Under Articles 28 and 29 of the Tax Law	:	
for the Period June 1, 1996 through November 30, 1998.	:	

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Petitioner Hudson General Corporation, 111 Great Neck Road, Great Neck, New York 11022-0355, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1996 through May 31, 1996.

Petitioner Hudson General, LLC, 111 Great Neck, New York, 11022-0355, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1996 through November 30, 1998.

A hearing was held before Arthur S. Bray, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on August 7, 2001 at 10:30 A.M., with all briefs to be submitted by December 12, 2002, which date began the six-month period for

the issuance of this determination. Petitioners appeared by Phillips, Lytle, Hitchcock, Blaine & Huber, LLP (Gary J. Gleba, Esq., of counsel). The Division of Taxation appeared by Barbara G. Billet, Esq. (Dennis A. Fordham, Esq., of counsel).

### ***ISSUE***

Whether petitioners' purchases of air cargo container loaders were exempt from sales tax under Tax Law § 1105(c)(3)(v) and § 1115(a)(21).

### ***FINDINGS OF FACT***

1. During the periods in issue, Hudson General Corporation and its successor, Hudson General LLC, (collectively "Hudson General" or petitioner) engaged in the business of servicing commercial aircraft at John F. Kennedy International Airport ("JFK") and LaGuardia Airport in New York State. Hudson General operated under contract with various commercial airlines. All of the aircraft serviced by Hudson General were commercial aircraft located at JFK and LaGuardia Airports.

2. Among the services provided by Hudson General during this period were deicing, refueling, heating and air conditioning and installing, loading and offloading of baggage and cargo.

3. During the period at issue, Hudson General purchased cargo container loaders manufactured by FMC Corporation. The loaders were used exclusively to provide baggage handling services for commercial aircraft. Hudson General used various types of loaders during the audit period to install, load and offload baggage and cargo onto and off of commercial aircraft. One type of loader is referred to as a belt loader. A belt loader is used to load and unload loose baggage and cargo. Hudson General paid sales tax on its purchases of belt loaders as well as on several other types of property used to transport luggage in and around the ramp

area of the airport, including baggage tugs, baggage carts, baggage tractors, dollies, transporters, pick-up trucks and vans.

4. A second type of loader used by Hudson General was a cargo container loader or pallet loader. Through the use of a scissors mechanism, the loaders raised and lowered the cargo containers between the ground transporter on the tarmac and the aircraft's cargo bay door. The loaders were used exclusively to install in and remove from commercial aircraft air cargo containers or containerized pallets collectively known as unit load devices ("ULD's"). The air cargo containers and pallets are owned by the airlines. Forklifts or other loading equipment is not allowed to be used for installing and removing cargo containers and containerized pallets because of safety considerations.

5. The Commander 15 and 30 loaders do not attach to the aircraft. The MLD-60 main deck loader attaches to the aircraft for loads of 80,000 pounds. The physical linkage takes place when large hooks in the front of the MLD-60 loader are placed into holes in the aircraft's cargo bay doorsill.

6. Once the ULD has been packed at the terminal, it is transported, usually on a dolly, to the loader which is positioned near the aircraft. The dolly is brought alongside the loader, and the locks on the dolly, which secure the ULD, are released. With a slight push, the ULD slides across the dolly's rollers onto the elevator of the loader. Thereafter, the rollers on the elevator take hold of the container and pull it onto the elevator.

7. The loader consists of an elevator and a bridge. Once the ULD has been transferred onto the elevator, a scissor lift raises the elevator, with the ULD, to the level of the loader's bridge which is at the same level as the cargo bay door. Through a series of rollers, the container is transported to the bridge. Then, the ULD is transferred, by a powered roller system on the

bridge, to the aircraft's cargo bay doorway. The loader is not inserted inside the aircraft's cargo bay.

8. Once it is inside of the aircraft's cargo hold, the ramp service agent on the bridge of the loader slides forward the loader's control platform so that he is able to open a door in the fuselage of the aircraft and gain access to the aircraft's own controls. The loader's own controls are used to maneuver the ULD when it is inside of the airplane. The ULD is moved to its final position inside the airplane by the airplane's internal powered roller system. Through the use of a locking mechanism that hooks to the lip of the cargo container, the ULD is secured in its final position.

9. The cargo containers are placed in the aircraft according to the directions on a load sheet which is prepared by an operation agent. The load sheet is an integral part of flying the aircraft because the captain sets certain controls according to the load sheet. The load sheet is designed to keep the aircraft level and avoid an up or down pitch. The minimum consequence of an up or down pitch would be an increased use of fuel and flight time. The maximum consequence would be a crash.

10. Aircraft seldom fly without cargo containers. They will occasionally fly with cargo containers that have not been filled in order to balance the container inventory from one location to another.

11. The baggage handling process includes the loading and unloading of aircraft and consists of four steps: (1) packing the ULD; (2) transporting the ULD between the terminal and the aircraft; (3) accessing the cargo bay doorway; and, (4) fitting the ULD into the fuselage and restraint system. Each of these steps is performed by ramp service agents who, unlike aircraft service personnel, are not licensed by the FAA. Ramp service agents are required to meet the

general FAA regulatory standards which are similar to those which the other Hudson General employees must satisfy, to wit: (1) they are able to identify dangerous goods; (2) they are subject to a five-year background check; and (3) they are required to have a training record showing that they have been trained on the proper method of loading.

12. Petitioner charges customers on the basis of a standard service agreement which delineates, in detail, all of the services that are provided to a customer. The system for breaking down services would have separate categories for aircraft loading and unloading and for aircraft maintenance. If petitioner was providing the service of aircraft maintenance, it would not be using air cargo container loaders.

13. Prior to the audit at issue here, Hudson General was audited on three prior occasions. The first sales tax audit, which was for the period October 1, 1983 through August 31, 1988, resulted in an informal, nonbinding agreement not to impose sales tax on the container loaders. In reaching this agreement, the auditor expressly stated that future audits did not have to agree with the interpretation that was reached on that audit.

14. During the second sales tax audit, which was for the period June 1, 1989 through May 31, 1992, the auditor requested guidance as to the taxability of certain items including the loaders at issue here. The auditor was advised by a memorandum that pallet loaders were taxable. The memorandum was provided to Hudson General's compliance representative, Mr. Regenstein, at which time Mr. Regenstein knew that the Division of Taxation would seek to impose sales tax on air cargo loaders. In October 1993, the audit was closed and the taxability of the loaders was a disagreed item challenged before the Division of Tax Appeals.

15. On August 20, 1996, Hudson General and the Division executed a Stipulation for Discontinuance for the period June 1, 1989 through May 31, 1992. The agreement provided that

from June 1, 1989 to February 29, 1996<sup>1</sup>, no tax would be paid on the purchase of pallet loaders but tax would be paid on the purchase of belt loaders. At the time the settlement was finalized, the supervisor for the periods governed by the stipulation advised Hudson General's tax supervisor that the settlement did not apply to subsequent audit periods. Thereafter, during the closing conference for the second audit period, petitioner was told that the Division of Taxation would impose tax on the purchase of pallet loaders during future audit periods.

16. The Division issued a Notice of Determination (assessment number L-018531647-1), dated September 12, 2000, to Hudson General Corporation, which assessed a deficiency of sales and use tax for the period March 1, 1996 through May 31, 1996 in the amount of \$41,782.12 plus interest in the amount of \$17,966.90 for a balance due of \$59,749.02. The Division also issued a Notice of Determination (assessment number L-018533718-5), dated September 19, 2000, which assessed a deficiency of sales and use tax for the period June 1, 1996 through November 30, 1998 in the amount of \$52,429.09 plus interest in the amount of \$14,958.77 for a balance due of \$67,387.86.

17. Air cargo containers are certified as airworthy by the FAA and are the same type of container referenced in a Division technical services memorandum (TSB-M-80[4.1]S). The containers are specifically designed to fit into the fuselage of aircraft rather than for use by other transportation systems such as trucks, railways or ships. According to manuals prepared by the International Air Transport Association, air cargo containers are "a removal element of the aircraft floor" and are locked into rails on the inside of the aircraft cargo bay "becom[ing] a component part of the aircraft."

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<sup>1</sup> At the time of the agreement, an audit of the period June 1, 1996 through February 29, 1996 was underway.

18. The primary advantage of using cargo containers in wide-bodied commercial aircraft is that they add to the safety of the aircraft by stabilizing the load. Container loaders are the only equipment capable of safely installing air cargo containers into the cargo bay of commercial airlines.

19. In 1991, the Division advised Devtec Corp. (“Devtec”), a vendor from whom Hudson General had purchased belt and container loaders, that Devtec was not required to collect sales tax on its sales of loaders to airlines. Subsequent to the 1991 letter, the Tax Appeals Tribunal held in *Matter of Aero Instruments and Avionics, Inc.* (Tax Appeals Tribunal, October 5, 1995) that the exemption under Tax Law § 1115(a)(12) applied not only to airlines but also to nonairline businesses, such as Hudson General, which service commercial aircraft.

20. In accordance with State Administrative Procedure Act § 307(1), petitioner’s proposed findings of fact have been generally accepted and incorporated herein. Additional findings of fact have also been made.

#### ***SUMMARY OF THE PARTIES’ POSITIONS***

21. In its brief, petitioner argues that the air cargo loaders purchased by Hudson General were used by commercial aircraft to install a component part of the aircraft and used to maintain the fitness, efficiency, readiness and safety of the commercial aircraft and were therefore exempt from sales tax under Tax Law § 1105(c)(3)(v) and § 1115(a)(21).

22. In its brief, the Division argues that in order to prevail petitioner must prove that the cargo container loaders are used to maintain the aircraft or the cargo containers themselves within the meaning of Tax Law § 1105(c)(3) or § 1115(a)(21); that the loaders are not exempt because they were not used “directly” to perform “maintenance or repair” services to the

commercial aircraft; and, that the loading of tangible personal property is not a taxable service under Tax Law § 1105(c)(3).

23. In its reply brief, petitioner stresses that it seeks an exemption for property used by commercial aircraft. Further, it disagrees with the suggestion in the Division's brief that a forklift could be used to load cargo containers into an aircraft. Petitioner next submits that "container loaders are necessary to ensure the safety and airworthiness of the aircraft and the cargo containers which are a component part of the aircraft." (Petitioner's reply brief, p.6.) It is noted that cargo container loaders are the only mechanisms by which air cargo containers can be safely installed.

Petitioner notes that in TSB-M-80(4.1)S, the Division determined that air cargo containers were a component part of the aircraft. It then contends that the function of installing a component part of the aircraft is a maintenance function since it is necessary to ensure the fitness of the cargo container and the aircraft. Next, petitioner reiterates its argument that property "used by" commercial aircraft is exempt relying upon *Matter of Aero Instruments and Avionics, Inc.*, (*supra*). Lastly, in response to the final point raised by the Division, petitioner argues that whether loading luggage is a taxable service is irrelevant.

### ***CONCLUSIONS OF LAW***

A. Tax Law § 1105 (a) imposes a sales tax upon the receipts of every retail sale of tangible personal property except as otherwise provided in Article 28 of the Tax Law. The Tax Law imposes a sales tax on the receipts from "[i]nstalling tangible personal property . . . or maintaining, servicing or repairing tangible personal property [Tax Law § 1105(c)(3)] . . . except . . . such services rendered with respect to commercial aircraft, machinery or equipment and property used by or purchased for the use of such aircraft as such aircraft, machinery or



equipment, and property are specified in paragraph twenty-one of subdivision (a) of section eleven hundred fifteen of this article. . . .” (Tax Law § 1105[c][3][v].)

B. Section 1115(a)(21) of the Tax Law exempts from sales tax the receipts from the sale of “[c]ommercial aircraft primarily engaged in intrastate, interstate or foreign commerce, machinery or equipment to be installed on such aircraft and property used by or purchased for the use of such aircraft for maintenance and repairs and flight simulators purchased by commercial airlines.”

C. Petitioner has the burden of proving the nontaxability of its purchases of air cargo loaders since Tax Law § 1132(c) creates a presumption that all receipts for property mentioned in Tax Law § 1105(a) are subject to tax unless the contrary is established. Furthermore, exemptions from tax are strictly construed. “An exemption from taxation ‘must clearly appear, and the party claiming it must be able to point to some provision of law plainly giving the exemption’” (*Matter of Grace v. State Tax Commn.*, 37 NY2d 193, 196, 371 NYS2d 715, 718, *lv denied* 37 NY2d 708, 375 NYS2d 1027 quoting *People ex rel. Savings Bank of New London v. Coleman*, 135 NY 231, 234). Furthermore, the statutory language providing the exemption must be construed in a practical fashion (*see, Matter of Qualex, Inc.*, Tax Appeals Tribunal, February 23, 1995).

D. Initially, petitioner argues that, in order to be exempt, the property “used by” the commercial aircraft need not be installed on the aircraft or otherwise used for maintenance and repair of the aircraft. According to petitioner “[t]he plain meaning of the statute and use of the disjunctive ‘or’ shows that the legislature intended that each category of property set forth in Tax Law § 1115(a)(21) separately qualifies for exemption.” (Petitioner’s brief, p.9.) Petitioner

submits that the Legislature did not intend that property “used by” commercial aircraft qualifies for exemption only if the property were used for the maintenance and repair of the aircraft.

E. As noted by the Division, petitioner’s proposed interpretation of Tax Law § 1115(a)(21) renders a portion of this section meaningless. In effect, petitioner is stating that this section exempts both property used by such aircraft and property purchased for the use of such aircraft. However, if property used by the aircraft is exempt there is no reason to create an additional exemption for property purchased for the use of the aircraft. It follows that petitioner’s argument must be rejected because it violates the fundamental rule that “a statute must be read so that each word or sentence will have a meaning and not so that one word or sentence will cancel and render meaningless another word of the sentence.” (McKinney’s Cons Laws of NY, Book 1, Statutes § 98.) In accordance with this rule, it is concluded that the plain meaning of the statute is that the property must be purchased for aircraft maintenance and repairs in order to be exempt. Accordingly, equipment used for the installation of property, such as air cargo containers, is not exempt.

F. Petitioner’s reliance upon TSB-M-80(4.1)S to support its position that items used by aircraft are exempt is misplaced. In this memorandum, the Division determined that air cargo containers were exempt from sales tax pursuant to Tax Law § 1115(a)(21) as “machinery or equipment to be installed on such aircraft.” They were not found exempt merely because they were used by the aircraft.

G. In its brief, petitioner asserts that air cargo loaders are used exclusively to load air cargo containers and are thus indistinguishable from storage racks used to store air cargo containers which the Division allegedly found to be exempt in TSB-M-96(81)S. However, the memorandum relied upon by petitioner does not correspond with petitioner’s interpretation. In

the next to last paragraph of the Technical Service Bureau memorandum relied upon by petitioner, the Division specifically found that the storage racks used to store air cargo containers do not meet the requirements for exemption provided in section 1115(a)(21) of the Tax Law and thus are subject to State and local sales and use taxes. The Division reached this conclusion on the basis that the items were not installed on the aircraft and were not used to repair or maintain the aircraft.

H. Petitioner next argues that the containers are used to maintain the commercial aircraft. According to petitioner, the container loaders are necessary to properly and safely install and remove containers and that other equipment, such as forklifts and belt loaders, cannot be used for installing containers. It is noted that the airworthiness of aircraft carrying commercial freight depends on the proper installation and placement of the containers. In this regard, petitioner makes three points. First, petitioner contends that the airworthiness of commercial aircraft carrying freight depends on the proper installation and placement of the containers into the aircraft because it is necessary to stabilize the load. A load sheet determines the placement of the containers in order to maintain a center of balance in order to prevent excessive fuel burn, minimize flight time and prevent a crash. Second, petitioner posits that the container loaders are necessary for the safe loading and unloading of the aircraft. In this regard, petitioner notes that forklifts cannot safely install containers into commercial aircraft. Lastly, petitioner submits that the use of containers and loaders promotes the efficient use of commercial aircraft by minimizing turnaround time and better utilization of the space in the aircraft. Petitioner concludes with the observation that, on the basis of *Matter of Aero Instruments and Avionics, Inc.* (Tax Appeals Tribunal, October 5, 1995), petitioner's position as a third-party service

provider does not affect the applicability of the sales tax exemption under Tax Law § 1115(a)(21).

I. The Commissioner's regulations define the terms "installing, repairing, servicing and maintaining" as follows: "[m]aintaining, servicing and repairing are terms used to cover all activities that relate to keeping tangible personal property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition." (20 NYCRR 527.5[a][3].) It is not disputed that the proper installation and placement of the air cargo containers are necessary for the safe and efficient operation of the aircraft. Moreover, the weight of the evidence in the record supports petitioner's position that forklifts or other loading equipment cannot be used to safely install air cargo containers into aircraft. In addition, it is not questioned that the use of the containers and air cargo loaders promotes the efficient functioning of the aircraft. However, it is equally clear that the loaders are not engaged in maintenance within the meaning of Tax Law § 1115(a)(21) and 20 NYCRR 527.5(a)(3). As pointed out by the Division, the function of the loader is to take the air cargo container from the transporter device, raise it until it is even with the cargo bay door and convey it into the cargo bay. The device merely completes the task of transporting the packed air cargo container from the transporter to the cargo bay door. It follows that the air cargo loader is functionally the same as equipment which loads baggage and should be treated in a similar manner. The loaders did not keep the aircraft "in a condition of fitness, efficiency, readiness or safety or restor[e] it to such condition." (*Id.*)

J. In support of its position that the container loader is used for maintenance and repair, petitioner has attempted to establish, through both testimony and documents, that, upon installation, the pallets may be regarded as the floor of the aircraft. This position is also unconvincing. Webster's Third New International Dictionary defines floor as "1. The bottom or

lower part of any room: the part of a room upon which one stands.” Clearly, the pallets may not be regarded as a floor in any conventional sense of the term.

K. The petitions of Hudson General Corporation and Hudson General LLC are denied, and the notices of deficiency dated September 12, 2000 and September 19, 2000 are sustained.

DATED: Troy, New York  
June 6, 2002

/s/ Arthur S. Bray  
ADMINISTRATIVE LAW JUDGE